

**COMMITMENTS CONCERNING THE USE
AND DEVELOPMENT OF THE REAL ESTATE**

Flynn and Zinkan Realty Company (the "Owner"), being the contract purchaser of the real estate described in Exhibit A-1 attached hereto ("Parcel I"), and as the authorized agent for the legal owner of both Parcel I and Parcel II, the legal description of Parcel II is set forth in Exhibit A-2 attached hereto, (the real estate described in Exhibit A-1 and Exhibit A-2 being collectively referred to in these Commitments as the "Real Estate"), as a part of their Petition to change the zoning of the Real Estate, hereby unilaterally and voluntarily commit to the Town of Westfield-Washington Township Plan Commission and Town Council (hereinafter collectively the "Town") as follows:

1. **Description of Real Estate.** See Exhibit A-1 and Exhibit A-2 attached hereto and incorporated herein by this reference.
2. **Site Plan.** See Exhibit A-3 attached hereto and incorporated herein by this reference.
3. **Docket No.** 0306-REZ-02 (Plan Commission); Ordinance 03-28 (Town Council)
4. **Statement of Commitments.**
 - a. The Owner commits that with respect to the "proposed supermarket" building as identified on the Site Plan, such building will not exceed 65,250 square feet of ground floor area (which square footage is exclusive of any canopy or drive thru area).
 - b. The Owner commits that with respect to the 32,000 square foot multi-tenant building (which square footage is exclusive of any canopy or drive thru area), that there will only be one tenant whose ground floor area can be up to 13,000 square feet, and that none of the other tenants in this multi-tenant building will exceed 10,000 square feet of ground floor area.
 - c. The two buildings identified on the Site Plan as Building 3 and Building 4, shall have combined total ground floor area that shall not exceed 12,800 square feet in total ground floor area (which square footage is exclusive of any canopy or drive thru area), with the larger of these two buildings not to exceed 9,600 square feet of ground floor area.

d. A portion of this commercial development will consist of a refueling facility as depicted on the Site Plan. That section of the Site Plan depicted with diagonal lines and located between Springmill Road and this refueling facility, and that section of the Site Plan depicted with diagonal lines and located between 161st Street and this refueling facility, shall consist of a combination of berming and landscaping, at least three feet in height. In addition, the vertical height of this refueling facility shall not exceed 22 feet, as measured from the top of the asphalt to the outside top of the canopy over this refueling facility, and the under-canopy lighting fixtures will be flush with the ceiling of the canopy.

e. The Owner commits that the external finishes of all the buildings to be constructed on the Real Estate will be substantially similar to the proposed "conceptual" building elevations submitted under the Owner's Petition to Rezone the Real Estate.

f. The Owner commits to install continuous perimeter buffering consisting of berms and landscaping along the north and east boundary lines of the Real Estate (except in the locations of the pathway connections to adjoining properties), and intermittent berming along the south and west sides property lines of the Real Estate with landscaping so as to buffer adjacent properties, but in a manner that does not preclude or compromise the visibility of this neighborhood retail shopping center.

g. The Owner commits to pay for the cost of installing a traffic signal at the intersection of Spring Mill Road and 161st Street and any required turn lanes at such intersection if such signal and/or turn lanes are approved by the appropriate governing authorities. The Owner additionally commits to installing acceleration/deceleration lanes in the right-of-way of Spring Mill Road and 161st Street that adjoins the Real Estate, to be approved by the appropriate governing authorities.

h. The Owner commits that, at such time as Parcel II is redeveloped for commercial use, Parcel II shall contain no more than one building and no single occupancy on Parcel II shall exceed 10,000 square feet. The same type of exterior building elevation designs and perimeter buffering mentioned in these Commitments for Parcel I shall be applicable to Parcel II.

i. The Owner commits that notwithstanding the permitted uses set forth under the GB-General Business zoning ordinance of the Town of Westfield, those

uses set forth on Exhibit A-4, attached hereto, shall be prohibited on the Real Estate.

j. To meet the spirit and substance of these Commitments, the Owner will submit its proposed detailed landscaping plan and its proposed exterior building elevations as part of the established development plan review process and regulations to the Director of the Community Development Department for the Town of Westfield. Once this commercial development is completed, then the Director of the Community Development Department for the Town of Westfield, Indiana, shall, when requested by the Owner, give the Owner written assurance, in letter form, that the Owner has or has not complied with all of these Commitments, which compliance letter will be relied upon by the Owner, its tenants, lenders, and its and their successors and assigns.

4. **Binding on Successors and Assigns.** These Commitments are binding on the Owner of the Real Estate, each subsequent owner of the Real Estate, and any other person acquiring an interest in the Real Estate.

5. **Effective Date.** These Commitments shall be effective upon the approval by the Town Council of the Town of Westfield-Washington Township of the Petition to Change Zoning filed under Docket No. 0306-REZ-02 (Plan Commission) and Ordinance No. 03-28 (Town Council), and the approval of the Site Development Plan approval of the Real Estate by the Town of Westfield-Washington Township Plan Commission in accordance with these Commitments.

6. **Recording.** The Owner hereby authorizes the Director of Community Development or the Secretary of the Town of Westfield-Washington Township Plan Commission to record these Commitments in the Office of the Recorder of Hamilton County, Indiana, upon the granting of the approvals referred to in paragraph 5 above.

7. **Enforcement.** These Commitments may be enforced by the Town of Westfield-Washington Township Plan Commission, Town Council and the Town of Westfield.

Executed this 3rd day of September, 2003.

FLYNN & ZINKAN REALTY COMPANY

By: Stephen P. Zinkan
Stephen P. Zinkan, Partner

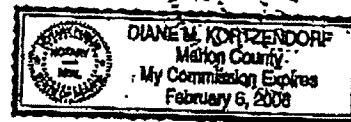
STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Stephen P. Zinkan, a partner of Flynn & Zinkan Realty Company, who acknowledged the execution of the foregoing Commitments Concerning the Use and Development of Real Estate for and on behalf of said partnership.

WITNESS my hand and Notarial Seal this 3rd day of September, 2003.

Diane M. Kortzendorf Notary Public

My Commission Expires: February 6, 2008
My County of Residence: Marion



This instrument prepared by and when recorded return to: Diane M. Kortzendorf, Attorney-at-Law, Flynn & Zinkan Realty Company, 5332 North Temple Avenue, Indianapolis, IN 46220.

EXHIBIT A-1**Parcel I**

A part of the Northwest Quarter of Section 11, Township 18 North, Range 3 East in Washington Township, Hamilton County, Indiana, being more particularly described as follows:

Beginning at the Southwest corner of said Northwest Quarter Section; thence North 00 degrees 00 minutes 03 seconds West (assumed bearing) along the West line of said Northwest Quarter Section 361.88 feet; thence North 89 degrees 59 minutes 57 seconds East 312.00 feet; thence North 00 degrees 00 minutes 03 seconds West parallel with the aforesaid West line 249.52 feet; thence North 89 degrees 14 minutes 37 seconds East parallel with the South line of said Northwest Quarter Section 891.22 feet; thence South 00 degrees 00 minutes 03 seconds East parallel with the aforesaid West line 607.29 feet to a point on the South line of said Quarter Section; thence South 89 degrees 14 minutes 37 seconds West along said South line 1203.25 feet to the Place of Beginning, containing 15.000 acres, more or less.

EXHIBIT A-2**Parcel II**

Part of the Northwest Quarter of Section 11, Township 18 North, Range 3 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the above mentioned Quarter, North 00 degrees 00 minutes East (assumed bearing) along the west line of said Quarter Section 361.38 feet to the place of beginning to this description, thence continuing along said line 249.52 feet to a point, thence North 90 degrees 00 minutes East 312.00 feet to a point; thence South 00 degrees 00 minutes East 249.52 feet to a point, thence South 90 degrees 00 minutes West 312.00 feet to a point which is the beginning point of this description, containing 1.78 acres, more or less.

EXHIBIT A-4

- Apartments/Hotel/Motels
- Auction Rooms
- Auto Storage (unless in connection with auto rentals)
- Auto Sales (new or used)
- Billiard Parlor (unless greater than 50% of sales derived from food)
- Bus Station
- Mortuary/Casket Sales
- Cemetery Monument sales
- Embalming School
- Exhibition Hall
- Farm Implement Sales/Service
- Glass Fabrication/Installation
- Lumber Yard
- Mobile Home Sales
- Model Display Homes and Garages
- Nightclubs, Bars, etc. (with less than 50% of sales derived from food)
- Self-Service Car Wash
- Semi-Automatic Car Wash
- Storage and Transfer
- Taverns (unless greater than 50% of sales from food)
- Taxidermist
- Testing Lab (unless a component of a doctor or dentist office)
- Tire Re-Capping
- Trailer Rentals
- Travel Trailer Sales and Rentals